*** THE HON'BLE MR JUSTICE P.S.NARAYANA**

+WRIT PETITION NO : 25261 of 2007

% 3-12-2007

Hanuman Vyas .. Petitioner

Vs.

$ The State through the Inspector of Police,

Vigilance Cell, C.S.Department, Hyderabad ..

Respondent

<GIST:

>HEAD NOTE:

! Counsel for appellant : Sri Ghanshyam Das Mandhani

^ Counsel for respondent : G.P. for Civil Supplies

?CASES REFERRED:

[1] AIR 1958 S.C., 86 (1)

2 2000 (5) A.L.D., 418

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.25261 of 2007

Date: 3rd December, 2007

Between :-

Hanuman Vyas .. Petitioner

And

The State through the Inspector of Police,
Vigilance Cell, C.S.Department, Hyderabad ..

Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.25261 of 2007

ORDER:-

The matter is coming up for *admission.*

Heard Sri Ghanshyam Das Mandhani, the learned Counsel representing the writ petitioner and the learned G.P. for Civil Supplies.

Sri Ghanshyam Das Mandhani, the learned Counsel representing the writ petitioner had placed strong reliance on the decision of the Apex Court in ***STATE OF U.P., v. MOHAMMAD NOOH*** [1] and would maintain that the Writ Petition can be maintained. The learned Counsel also would submit that here is a case where the Special Court in violation of principles of natural justice had made an order and hence, the same can be challenged by filing a Writ of Certiorari. The Counsel also had drawn the attention of this Court to the distinction to be drawn between a Writ of Mandamus and also a Writ of Certiorari.

Per contra, the learned G.P. for Civil Supplies would maintain that the writ petitioner is having an effective alternative remedy by way of a revision under Section 397 of the Criminal Procedure Code, 1973. The learned

Counsel also would submit that this is not a case of either inherent lack of jurisdiction on the part of the Court to try the matter or to hear the matter or the question of competency and hence, in the light of the facts and circumstances, this Court cannot entertain a Writ Petition of this nature. The learned G.P. for Civil Supplies placed strong reliance on the decision of the learned Judge of this Court in ***PRUDENTIAL CAPITAL MARKETS LTD., CALCUTTA v., STATE OF A.P.***[2]

Heard the Counsel.

As can be seen from the facts, the Chief Rationing Officer, Hyderabad passed an order dt.3-6-99 which was served on the petitioner on 29-7-99 in Case No.204/98 in Crime No.239/VC-CITY/TI/98. The order passed by the Chief Rationing Officer, Hyderabad, aforesaid, had been challenged by way of appeal under Section 6(c) of the Essential Commodities Act bearing Criminal Appeal No.56/99 on the file of the Court of III-Additional Metropolitan Sessions Judge, Hyderabad. Further it is stated that in view of the directions of this Court in W.P.No.23597 and 2497 of 1999 dt.22-12-1999, the appeal was posted for dismissal by the III-Additional Metropolitan Sessions Judge, Hyderabad and the petitioner filed W.P.No.6235/2000 before this Court challenging the order dt.3-6-99 passed by the Chief Rationing Officer, Hyderabad, on the ground that as per G.O.Ms.No.38 (L.A. and J.Courts C) Department dt.11-3-1998, there was no Court of Appeal constituted. This Court passed an order on 3-4-2006 in W.P.No.6235/2000

stating that since the appellate authority i.e., the Special Judge had been notified as Appellate Authority, the said appeal to be heard by the said Special Judge. Further specific stand had been taken that after disposal of the above Writ Petition, neither the petitioner nor his Counsel received any notice nor intimation from the appellate Court regarding posting of the appeal and since no notice was served either on the petitioner or on the Counsel, they could not attend the appellate Court. Further it is the case of the writ petitioner that in view of the conditional stay order, the petitioner gave Bank Guarantee for the value of goods to the respondent and every year the petitioner used to attend the Office of the respondent for extension of the Bank Guarantee by addressing a letter. On 22-11-2007 the petitioner went to the Office of the respondent for extension of the Bank Guarantee but the respondent was informed that there is no need for extension of Bank Guarantee as he received information that the appeal filed by him had been dismissed. Further it is averred that after perusing the Court diary and records, the petitioner and his Counsel found that the appellate Court neither ordered any notice nor served any notice either on the petitioner or on the Counsel of the petitioner after receiving the file and without any notice, dismissed the appeal on 23-3-2007. Certain observations made by the appellate Court also had been referred to and it is stated that such observations are not supported by the proceedings of the Court. Hence, in such circumstances, a Writ of Certiorari had been filed to call for the entire

records of the Appellate Court in Criminal Appeal No.243/06 Old E.C.Appeal No.56/99 along with the Court proceedings and pass appropriate orders.

It is no doubt true that the learned Counsel placed strong reliance on the decision of the Apex Court in ***State of U.P.'s case (1 supra)***. The main grievance of the writ petitioner is that in the light of the said order made by the Appellate Court, his Bank Guarantee is going to be encashed by tomorrow. Relating to the merits and demerits of the matter, this Court is not inclined to express any opinion, but however, to enable the writ petitioner to invoke the appropriate remedy under Section 397 of the Code of Criminal Procedure, 1973, let not the Bank Guarantee be encashed for a period of ten days. The Writ Petition is disposed of accordingly. No costs.

To enable the writ petitioner to pursue the alternative remedy by way of revision under the Code of Criminal Procedure, 1973, let the Registry to return the certified copies of the order to the writ petitioner.

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Justice P.S.Narayana

3rd December, 2007
smr

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[1] AIR 1958 S.C., 86 (1)
[2] 2000 (5) A.L.D., 418